

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHNATHAN LARAWN ROUNDTREE,

Defendant-Appellant.

UNPUBLISHED

October 3, 2006

No. 262328

Wayne Circuit Court

LC No. 04-012023-01

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right his waiver trial conviction for carjacking, MCL 750.529a. Defendant was sentenced to 135 to 270 months' imprisonment for the carjacking conviction. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's first issue on appeal is whether the admission of irrelevant testimony regarding the police wanting him for an unrelated criminal sexual conduct charge denied him the right to a fair trial. Defendant failed to make a timely objection below so this issue is unpreserved for appeal. *People v Jones*, 468 Mich 345, 355; 662 NW2d 376 (2003).

Unpreserved, nonconstitutional errors are reviewed for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). To avoid forfeiture under the plain error rule, three requirements must be met: (1) the error occurred, (2) the error was plain, i.e., clear and obvious, and (3) the plain error affected substantial rights. *Carines, supra* at 763. The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings. The defendant bears the burden with respect to prejudice. *Carines, supra* at 763. Once the defendant establishes those three elements, the appellate court must still exercise its discretion in deciding whether to reverse. Reversal is warranted only when the plain, unpreserved error resulted in the conviction of an actually innocent defendant or when the error seriously affected the fairness, integrity, or public reputation of the judicial proceedings independent of the defendant's innocence. *Carines, supra* at 763.

It is undisputed that the admission of testimony that defendant was wanted on an unrelated criminal sexual conduct charge was clear or plain error. However, defendant would also have to show that he was prejudiced by the admission of the testimony by demonstrating that the error affected the outcome of the lower court proceedings. *Carines, supra*, 460

Mich 763. In this case, the fact that defendant was wanted on an unrelated charge was only mentioned once during the testimony of a police officer. The prosecution never discussed the unrelated charge. The trial court did not mention the unrelated charge in its factual findings and there is nothing to suggest that the trial court gave it any weight. Moreover, because trial judges are reputedly able to focus on the task of fact-finding, as opposed to improper considerations that a jury might find compelling, it is generally assumed that error is less likely to require reversal in a bench trial. *People v Edwards*, 171 Mich App 613, 619; 431 NW2d 83 (1988). Furthermore, both the victim and his mother identified defendant as one of the carjackers and their eyewitness testimony was strong evidence against defendant. We therefore conclude that defendant cannot meet his burden of showing that he was prejudiced by the error.

Defendant's second issue on appeal is whether the trial court erred in allowing the prosecution to amend date of the offense on the information. A trial court's decision to grant a motion to amend information is reviewed for an abuse of discretion. *People v McGee*, 258 Mich App 683, 686-687; 672 NW2d 191 (2003). The trial court abuses its discretion if the result is so contrary to fact and logic that it evidences a perversity of will, a defiance of judgment, or an exercise of passion or bias, or when an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling. *McGee, supra* at 688.

The trial court may permit the prosecution to amend the information before, during, or after the trial unless the proposed amendment would unfairly surprise or prejudice the defendant. *McGee, supra* at 689; MCR 6.112(H). Defendant argues on appeal that he was prejudiced by the amendment. Unacceptable prejudice includes inadequate notice and inadequate opportunity to defend against the charged crime. *People v Hunt*, 442 Mich 359, 364; 501 NW2d (1993).

As noted by defense counsel at trial at the time of the prosecution's motion to amend, defendant did not have an alibi for November 7, 2004. However, the amended information identified the correct date of November 6, 2004, and defendant may have had an alibi for that date. The trial court, noting that this was a waiver trial, stated that defendant could be accommodated and the trial delayed if defendant wished to present an alibi defense. The trial court also left the issue open "until I find that there's been some prejudice to [defendant] that should go against the prosecution's motion of being granted, I will grant it until further argument, if there is any." Defendant never moved for a continuance at trial nor does he argue on appeal that he actually had an alibi for November 6, 2004. Defendant had adequate notice and adequate opportunity to defend against the charges against him and we conclude that it was not an abuse of discretion for the trial court to allow the amendment of the information because defendant suffered no prejudice.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Jessica R. Cooper